IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 520 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DINESHKUMAR JAGDISHPRASAD AGRAWAL

Versus

STATE OF GUJARAT

Appearance:

MR WA URAIZEE for Petitioner

MR KG SHETH APP for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 23/04/2001

ORAL JUDGEMENT

1. The present petitioner abovenamed has preferred this Criminal Revision Application under Section 397 of the Code of Criminal Procedure, 1973 (for short "Code") challenging the judgement and acquittal order dated 19.9.2000 recorded by the learned Chief Metropolitan

Magistrate in criminal case No. 474/1997, under which, the learned Magistrate acquitted respondent no. 2 herein from the offences punishable under Sections 294, 506, 323 and 427 of the Indian Penal Code.

2. The facts of the case of the present petitioner before the trial Court may be briefly stated as follows :-

The petitioner and the contesting respondent no. 2 stand in the relationship of brother-in-law. The prosecution alleged before the trial Court that on 1.6.1997 at about 1.30 p.m. contesting respondent no. 2 had given abuses to the petitioner and had also beaten him. That one witness Mohanbhai tried to interfere, as a result thereof, he also sustained injuries at the hands of the contesting respondent no. 2. Even, the wrist watch put on by the petitioner sustained damage. The contesting respondent also allegedly caused injuries to the petitioner and therefore, FIR was filed by the petitioner before Bapunagar Police Station.

3. After investigation into the matter, the contesting respondent was chargesheeted before the Court of Metropolitan at Ahmedabad for the aforesaid offences.

4. Learned Magistrate had recorded the plea of the contesting respondent, who pleaded not guilty to the said charge. Thereafter, the learned Magistrate recorded the evidence produced by the prosecution and on conclusion of the evidence on record, further statement of the second respondent was recorded under Section 313 of the Code. Arguments were heard and thereafter, the learned Magistrate found that the charge against contesting respondent no. 2 was not proved and therefore, the second respondent came to be acquitted by the aforesaid judgement and acquittal order recorded by the learned Metropolitan Magistrate in the aforesaid case.

5. Feeling aggrieved by the aforesaid judgement and acquittal order recorded by the learned Magistrate, the petitioner original complainant - informant has preferred this revision application before this Court.

6. It has been mainly contended here that there was evidence before the trial court, but the learned Magistrate has omitted, to consider the same in proper perspective. That the learned Magistrate has seriously erred in acquitting respondent no. 2. That the whole judgement and acquittal order of the learned Magistrate are illegal and erroneous and deserve to be set aside.

7. It is therefore, prayed that the present revision application be allowed. The judgement and acquittal order recorded by the learned Magistrate be set aside and present respondent no. 2 be convicted for the aforesaid offences.

8. I have heard Mr. B.D. Karia, learned advocate on behalf of Mr. W.A. Uraizee, learned advocate for petitioner - original informant. I have also heard Mr. K.G. Sheth, learned APP representing the State of Gujarat. Learned advocate appearing for petitioner has taken me through the judgement of the learned Magistrate. He also took me through the evidence of witness, particularly the evidence of witness Dr. Virendrabhai Shah, relied upon by the trial Court, at Ex. 24.

6. Learned advocate for petitioner has argued at length that though the evidence of Dr. Virendra Shah at Ex. 24 clearly disclosed that he had seen x-ray plate in respect of the injuries of witness Mohanlal and though Dr. Virendra Shah has positively stated that as per x-ray plate as well as certificate, he had fracture on his 7th and 8th ribs and though the plate and the report have been produced at Exs. 25, 26 and 27, learned Magistrate has recorded a finding to the effect that it is not proved as to whether or not witness Mohanlal had fracture on his person. The learned Magistrate has recorded a finding that though there is a mention in Ex. 27 about the fracture to the ribs of Mohanbhai, the history given by him to the effect that he was given fist blow or kick blows. Learned Magistrate has also recorded a finding that the x-ray plate no. 1, 2, 4 and 5 shows fractures and even in Ex. 27, the certificate, the fact of fracture appears to have been subsequently added.

7. Learned advocate for the petitioner has argued on this point that the learned Magistrate had not properly considered the evidence of Dr. Virendra Shah at ex. 24. It is his argument that when the witness has referred x-ray plates and has based his opinion and finding on the strength of the x-ray plate showing fracture on 7th and 8th ribs of Mohanlal, the learned Magistrate has given wrong finding in respect of the existence of injuries of fracture on ribs of Mohanbhai.

9. On the strength of the aforesaid arguments, learned advocate for the petitioner further argued that in that view of the matter, revision may be allowed and the matter may be remanded to the learned Magistrate for appreciation of the said evidence of x-ray plates as well

as of the opinion of Dr. Virendra Shah.

10. The petitioner has preferred revision application, where, the court hearing revision application has very limited powers and jurisdiction. Even a court hearing acquittal appeal is required to be slow in interfering with the acquittal orders of the lower Courts. It is well recognized in the case of State of Gujarat Vs. Mansukhlal Lovchand Choksi reported in 1993(2) GLH 849 that the Appellate Court should be slow and reluctant to interfere with the acquittal judgement and it cannot interfere with the same unless the judgement of the trial Court is perverse. Reappreciation of evidence is not permissible while hearing the acquittal appeal. Even in case of ISHWARBHAI FULJIBHAI PATNI VS. STATE OF GUJARAT , reported in 1995(2) GLH UJ-1, page 1, it has been observed that when two views are possible then as a matter of judicial caution, the High Court should refrain from interfering with the order of the acquittal of the trial court.

11. It would be seen that the learned Magistrate has appreciated the evidence produced before her. Even if the appreciation is wrong, the matter cannot be remanded for reappreciation of evidence.

12. It would be relevant to consider here that the powers of revisional court have been curtailed by the provisions made in Section 401 of the Code. Subsection 3 of Section 401 of the Code reads as under :-

" Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction. "

13. This is clearly mentions that the finding of acquittal cannot be converted into the finding of conviction and therefore, even if, this revision application is allowed, it would not be possible for this court to convict contesting respondent no. 2.

14. So, on one hand, reappreciation of evidence is not permissible and on the other hand, the matter cannot be remanded for reappreciation of the evidence. It is more so when he learned Magistrate has already taken into consideration the evidence of Dr. Virendra Shah. Therefore, even if, reappreciation of evidence of Dr. Shah by learned Magistrate is not proper then, also the matter cannot be remanded back to the learned Magistrate

for reappreciation of the evidence. It is not a case born out from the arguments of learned advocate for the petitioner that the learned Magistrate omitted to consider the evidence or a particular witness. Even the documentary evidence, medical evidence and x-ray plates had been taken into consideration by the learned Magistrate and therefore, even that part of the case before the trial Court has not been omitted from the consideration.

15. Even during the course of arguments, learned advocate for the petitioner was not in a position to show that evidence of any particular witness was omitted from consideration. It was not the case of the prosecution that some witnesses were omitted and therefore, their evidence was not recorded. It is not the case of the prosecution that the Court considering the aforesaid case, shut down the doors of the prosecution for production of evidence on record. So, on one hand, no evidence has been omitted from consideration and on the other hand, no inadmissible evidence has been made admissible. No admissible evidence has been omitted from consideration, no witness has been dropped. Therefore, full opportunity was there with the prosecution to prove its case.

16. Under the aforesaid set of facts, it is not open to this Court to remand the matter back to the trial Court for the purpose of reappreciation of the evidence already appreciated by the court concerned. If the court is not inclined to remand the matter then again there is no question of reappreciation of evidence and the Court cannot convert the finding of acquittal into the finding of conviction.

17. In the facts and circumstances of the case, there is no merit in the present revision application and accordingly it is required to be dismissed.

18. Mr. K.G. Sheth, learned APP during the course of his argument support the findings of the learned Magistrate and states that in view of the fact that this Court is exercising revisional jurisdiction, it is not open to differ from the view adopted by the learned Magistrate. Therefore, the learned APP also supports the judgement of the trial Court.

19. In the result, this Criminal Revision Application fails and is ordered to be dismissed. Notice is discharged.

(D.P. Buch, J.)

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